

THE RECORD OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

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Association Activities

BECAUSE OF the great interest indicated in Judge Wyzanski's discussion of Congressional Investigations, there is published in this number of THE RECORD a revision of his lecture on the subject delivered under the auspices of the Committee on Post-Admission Legal Education on January 13. Justice Ferdinand Pecora also took part in this program.

The next lecture sponsored by the Committee will be a joint discussion on the subject of Conflicts in Conflicts. The speakers are Judge Herbert F. Goodrich and Elliott Evans Cheatham. The discussion, to be held on March 16, will be preceded by a buffet supper.



THE COMMITTEE on the City Court of the City of New York, Lester Kissel, Chairman, is considering the possibility of publishing a handbook for jurors. Lester E. Denonn is chairman of the subcommittee in charge of this project. The plan would be to prepare a handbook similar to that used in the Federal Courts and to those used in many courts outside of New York. The book would be an exposition in simple terms of the jurors' duties and obligations. The Committee will also continue to press for the

adoption of pre-trial procedure in the City Court and is studying the use of pre-trial in the Supreme Court.



THE REAL PROPERTY Law Committee, Jule E. Stocker, Chairman, is reviewing legislation in the field of real property law. The Committee is cooperating successfully with the Committee on State Legislation in this work. Effective liaison is maintained by having joint meetings during the legislative session with a subcommittee from the Committee on State Legislation. Members of the State Legislation subcommittee are Albert W. Fribourg, Francis C. Leffler, and David R. Blossom.



THE JUNIOR BAR Activities Committee, Henry Harfield, Chairman, at its last meeting decided to sponsor a second moot court competition between Harvard and Columbia if a convenient time for both schools can be worked out, and to continue with its program of interschool competitions next fall. The Committee will also sponsor a party for auxiliary members of the Association sometime this spring and is making plans for a series of lectures next fall which would be designed to assist the lawyer who is beginning the practice of law.



ALTHOUGH THE ART COMMITTEE has decided not to hold a photographic exhibition this year, it will sponsor on May 4 its annual show of members' paintings and sculpture. A questionnaire has been mailed to the membership so that those who participate may indicate the work they wish to have considered for exhibition.



THE JOINT COMMITTEE of the Academy of Medicine and the Association, which was set up to draft legislation dealing with the control of alcoholism, had its first meeting at the House of the

Association on February 13. Legislation in other states dealing with this problem was considered by the Committee, and it was decided to draft a model act and submit it to the appropriate committees of the Academy and the Association for further consideration.



THE RECOMMENDATIONS of the Special Committee on the Federal Courts approved by the Association at the Stated Meeting in January were the subject of the leading article in the American Bar Association Journal for February. The American Bar Association will consider the Committee's recommendations at the meeting of its House of Delegates.



THE SEVENTH ANNUAL Benjamin N. Cardozo Lecture will be delivered at the House of the Association on April 20, 1948. Professor Arthur L. Goodhart, K.C., will speak on English Contributions to Legal Philosophy. Professor Goodhart is well-known to members of the Association, and it is anticipated that his lecture will be a notable contribution to the Cardozo Lecture series.

The Calendar of the Association For March

(As of February 20, 1948)

- March 1 Round Table Conference preceded by buffet supper for members of the Association at 6:15 P. M.
- March 2 Meeting of Committee on State Legislation
Joint Meeting of Subcommittees of the Committee on Real Property Law and the Committee on State Legislation
- March 3 Dinner Meeting of Executive Committee
Meeting of Section on Wills, Trusts and Estates
- March 8 Dinner Meeting of Committee on Professional Ethics
- March 9 *Stated Meeting of Association and Buffet Supper—6:15 P. M.*
Meeting of Committee on State Legislation
Joint Meeting of Subcommittees of the Committee on Real Property Law and the Committee on State Legislation
- March 10 Meeting of Section on Corporations
- March 11 Dinner Meeting of Committee on Medical Jurisprudence
- March 15 Dinner Meeting of Committee on International Law
- March 16 "Conflicts in Conflicts," Joint Discussion by The Honorable Herbert F. Goodrich, United States Circuit Judge for the Third Circuit, and Elliott Evans Cheatham, Professor of Law, Columbia University. Buffet Supper, 6:15 P. M.
Meeting of Committee on State Legislation
Joint Meeting of Subcommittees of Committee on Real Property Law and Committee on State Legislation
- March 17 Meeting of Committee on Admissions
Meeting of Section on Labor Law
Meeting of Committee on Public and Bar Relations

- March 18 Dinner Meeting of Committee on the Domestic Relations Court
- March 19 Meeting of Section on State and Federal Procedure
- March 22 Dinner Meeting of Committee on Insurance Law
Meeting of Section on Taxation
- March 23 Meeting of Committee on State Legislation
Joint Meeting of Subcommittees of Committee on Real Property Law and Committee on State Legislation
- March 24 Meeting of House Committee
Meeting of Section on Drafting of Legal Instruments
- March 25 Dinner Meeting of Committee on Courts of Superior Jurisdiction
- March 29 Meeting of Library Committee
- March 30 Meeting of Committee on State Legislation
Joint Meeting of Subcommittees of Committee on Real Property Law and Committee on State Legislation

President's Letter

To the Members of the Association:

After a summer of somnolence the Bar Association slowly swings into action and gradually increases its pace until in February and March it is operating at full speed. The perfectionist would like to see a shorter period of somnolence and a longer one of maximum activity. A president on his way out is inclined to be something of a perfectionist since it is someone else who will have to produce the perfection. Anyway, this is a subject on which I have not been entirely silent and which is really important. The January meeting was dull because no Committee had anything particularly interesting or at all controversial to bring up. More than enough discussion probably will be produced by the Committee reports to be made at the March meeting. If summer somnolence is to be persisted in, even in a minor degree, it might be a good idea to alter the schedule so as to have no meeting in January and one in February or April instead.

Come what may, the present state of acceleration is to be commended even if the prior lack of action is regrettable. One front on which a good deal is going on is that of the "special events" staged by various Committees. The Committee on Real Property Law pretty well packed the Meeting Hall on the evening of February 5th for the discussion of "Residential Rent Control," and it stayed packed from eight until nearly eleven. On Saturday afternoon, February 7th, Messrs. Grenville Clark and Clark Eichelberger discussed, respectively, world federation and the United Nations. There was a very good attendance and it is interesting that it consisted mostly of members of the Association, whereas non-members predominated at the rent discussion.

It is important that both of these gatherings concerned non-legalistic matters of public interest. There have been two schools of thought, one believing that it is outside the scope of a bar association to discuss matters which are not legal and the other demanding that the Bar should take an interest and a leadership in

all matters of national and international importance. Without joining either school, I have encouraged Committees and individuals to promote anything which will bring members to the House of the Association and give them enlightenment or enjoyment or both. Some of the critical-minded have seen fit to exaggerate the extent to which I have encouraged the enjoyment, rather than the enlightenment, element. In truth, my immediate objective has been about a half and half mixture of the two as the best basis for the ultimate objective of substantial accomplishments in the public interest. The Association does not exist for the edification or gratification of its members, although it is to be hoped that they get benefit and satisfaction by belonging and participating. Its *raison d'être* originally, its purpose today and its ambition for the future is to improve the law and the administration of justice. These, of course, touch each individual in his home or his work place or even in the excessive interval of isolation in the subway—mental, not physical.

The matter of increasing the revenue of the Association is engaging the attention of the officers and Executive Committee. Teamwork is needed if an increase in the dues of members is to be avoided. The question of conscience which each member must face is whether he falls within the group of roughly a thousand, or about a quarter of the active membership, who can afford to pay \$125 a year as Sustaining Members. It is not a question of what each member gets out of his dues in personal pleasure or profit. It is a question of the willingness of each member to contribute to the *pro bono publico* work of the Association.

The cost of the alterations and improvements now nearing completion will be somewhat more than was anticipated but probably less than if the work had been postponed. There is still basis for hope that there will result no increase in the debt of the Association as it existed three years ago. If this hope is realized the amount available in the future for current expenses will not be affected at all—except as the improvements may increase membership and reduce expenses of maintenance. What has been

done is to bring a building over fifty years old on which practically no money had been spent for repairs or replacements somewhat up to date in plumbing, lighting and fire escaping by using the reserves built up for that purpose during that period.

It must be admitted that the debt will have to be increased a little unless the holders of something like \$25,000 of the 3% Notes of the Association due in 1961 turn them in to the Endowment Fund. In doing so they may be motivated either by generosity or the desire for an income tax deduction. So far only \$4,500 of notes have been received. Perhaps this is because my suggestions to the noteholders have been made too diffidently—or perhaps it is because they have not been made diffidently enough.

HARRISON TWEED

February 13, 1948

Standards for Congressional Investigations

By CHARLES E. WYZANSKI, JR.

United States District Judge, District of Massachusetts

Ever since the first Congressional investigation—begun in 1792 and involving St. Clair, the Governor of the Northwest Territory—there has been vigorous public debate on the scope, methods and effectiveness of Congressional inquiries. As far back as 1832 John Quincy Adams raised a question which is still undetermined: can Congress rightly inquire into a private person's political belief. And as comparatively recently as April 6, 1924, Mr. Justice Holmes in a private letter to Sir Frederick Pollock was expressing doubts as to whether the chief effect of Congressional investigations was not to foster "a belief too readily accepted that public men generally are corrupt."

So far Congress has never seriously entertained a measure for the reform or limitation of Congressional Committees, although there have been many procedural bills introduced of which the latest is H. R. 4564, 80th Cong., 1st Sess., introduced by Mrs. Helen Gahagan Douglas, Nov. 24, 1947. The aversion to these reform measures is due in part to a justified belief that most investigations are satisfactory and those that are unsatisfactory could be cured not by differences in rules but only by differences in men and in the time they spend in preparing for hearings. However, objection may also be due in part to the extraordinary advantages which the present system gives to individual members of Congress. These advantages find illustration in the persons of the present President of the United States and the Senior Associate Justice of the Supreme Court of the United States.

Editor's Note: Judge Wyzanski, a graduate of the Harvard Law School, has served as solicitor of the Department of Labor, as Special Assistant to the Attorney General, and as Special Counsel for the Federal Home Loan Bank Board. He has lectured on Government at Harvard and has been an Overseer of Harvard University since 1943. He is a member of the Council of the American Law Institute and a member of the Joint Committee on Continuing Legal Education.

The failure of Congress to reform itself is not however a weakness peculiar to the legislature. Few institutions—be they courts, bar associations, administrative agencies, labor unions or stock exchanges—are quite so sensitive to their shortcomings and their need of reform as are outsiders. As Acton reminded us, "All power corrupts and absolute power corrupts absolutely."

In the absence of Congressional initiative the disinterested public may properly review the situation—taking into account first the legal foundation of Congressional inquiries and the present procedure and then considering what are asserted to be the abuses of the present system and what if any reforms are worth attempting.

Since *McGrain v. Daugherty*, 273 U. S. 135 (1927) there has been no doubt that either House of Congress has power, through its own process, to compel a private individual to appear before it or one of its committees and give testimony needed to enable it to exercise a legislative function given to it under the Constitution. Prior to 1927 the drift was the other way. While the leading case, *Kilbourn v. Thompson*, 103 U. S. 168 (1880), could be explained, as Van Devanter J. subsequently showed, as resting on the narrow ground that there Congress was inquiring of a matter which was pending in the courts and concerning which no valid legislation could be had, Miller J.'s opinion breathed an air of hostility to Congressional investigations. Indeed, from Prof. Fairman's researches, we now know that Miller simultaneously wrote a private correspondent that in 1880 "the majority of the court was prepared to decide that no power" existed "to compel by punishment witnesses to appear and answer questions which may throw light on the legislative duties of those bodies." Miller himself thought "the public has been much abused, the time of legislative bodies uselessly consumed and rights of the citizen ruthlessly invaded under the now familiar pretext of legislative investigation and that it is time that it was understood that courts and grand juries are the only inquisitions into crime in this country. I do not recognize that Congress is *the grand inquest* of the nation."

Despite the breadth of Van Devanter J.'s opinion in *Daugerty's* case and Butler J.'s opinion in *Sinclair v. United States*, 279 U. S. 263, it has however been suggested, as, for example, in the dissenting opinion in *United States v. Josephson*, C.C.A. 2, Dec. 9, 1947 and in a Note in 47 Columbia Law Review 416 that there are legal limitations which a court would impose upon Congressional inquiries. What are these possible limitations?

Of the limitations which do exist, one that is obvious in theory, though perhaps not in practice, is that the investigator is limited to compelling testimony which is, as 2 U.S.C. §192 puts it, "pertinent to the question under inquiry." That is, a witness can not be criminally punished in a court—and can not be held by a House of Congress for contempt [See *Sinclair v. U. S.*, 279 U. S. 263, 296–297]—if he refuses to answer a question which is not pertinent to the inquiry being conducted by the House or one of its Committees and the issue of pertinency is ultimately a question of law which a court, not Congress or a jury, may be required to resolve [*Sinclair's* case, pp. 296–299]. Moreover, the burden of proving relevancy is on the prosecution. [*Sinclair* case]. One difficulty with applying this doctrine in practice is that in every examination whether by lawyers in court or by Congressmen in committee so many questions are preliminary and intended merely as a foundation for an ultimate direct hit at the target that it is customary to leave to the tribunal of inquiry wide discretion in determining relevancy. Almost never is its discretion on such determinations disturbed. Moreover, in Congressional inquiries the standard by which relevancy is to be ascertained must necessarily be the relatively vague text of a resolution rather than the allegations of a court complaint. Although it has been suggested that a resolution may be so vague that no standard of pertinency is supplied and hence no compulsion to testify can be brought to bear on a witness, this suggestion has never been embodied in a majority opinion of any court.

Is it beyond its power for Congress to compel testimony on a subject as to which in the absence of an amendment to the Con-

stitution only the states can legislate? That there is such a limitation upon the Australian dominion legislative body was held by the Privy Council per Lord Haldane in *Attorney-General for the Commonwealth of Australia v. Colonial Sugar Refining Co.* [1914] A.C. 237 [P.C. 1913]. But I doubt whether such a limitation exists in the United States because, as now interpreted, our Constitution does not divide all subjects into two categories, one for the nation and another for the states; but instead allows Congress to use a granted power to reach many matters which may be primarily of local concern. Examples are the Harrison Narcotic Act, the Social Security Act and the Fair Labor Standards Act. If we suppose, for instance, that Congress began an inquiry into divorce laws, could any court be confident that the information gathered would not serve a useful purpose in connection with a statute under the full faith and credit clause or in connection with tax law problems, such as joint returns, deductions or treatment of alimony?

Is it beyond its power for Congress to compel testimony on a subject as to which Congress is inhibited by the First Amendment and similar provisions of the Bill of Rights? As a matter of fact, we know that Congress has compelled testimony about changes of opinion expressed by the press [See, for example, United States Lobby Investigation Hearings, p. 3729] and organized activity leading to petitions to the legislature [See, for example, *Francis E. Townsend v. United States*, 95 F. (2d) 352 (App. D. C. 1938), cert. den. 303 U. S. 664 (1938)]. And if Congress were not permitted to compel testimony about the exercise of the various liberties such as speech, press, assembly, and worship, Congress would be handicapped in framing Constitutional legislation. Moreover, the Courts would be handicapped in discovering the factual basis which was alleged to warrant legislative limits on liberties. Is not a broad factual inquiry a suitable way of determining whether danger is "clear and present?"

Is it beyond its power for Congress to compel testimony when Congress has not specifically indicated that it proposes to use the

testimony in connection with legislation? To this question the answer is categorically "no"; Congress has power even though it does not expressly avow the type of legislation, if any, it is considering enacting. *McGrain v. Daugherty*, 273 U. S. 135, 177-178.

We now come to the more difficult question whether Congress has the power to compel testimony in a ventilating investigation where its purpose is not to enact legislation but solely to expose facts and opinions to a public view. It is important to state at the outset that it is almost incredible that such a question can arise in practice. Almost every imaginable investigation will include as one of its declared primary purposes an inquiry as to how existing laws are working, or what laws might be passed, or how appropriations have been spent, or what appropriations might be made, or what other legislative action should be pursued. And it is unlikely that a Congressional committee would ever avow that it had only a ventilating objective. However, if a committee did avow this was its sole purpose or if (as Clark C. J. seems to have done in *Josephson's* case on the basis of the committee's history) a court found that was its sole objective, then the issue of Congressional ventilating power would be squarely raised. On that issue there are clear statements by the Supreme Court unfavorable to Congress. *Kilbourn v. Thompson*, 103 U. S. 168, 190; *McGrain v. Daugherty*, 273 U. S. 135, 173-174, 176. Moreover a general right of inquiry into private affairs has never been favored even by those scholars who regarded the *informing* function of a legislature as even more worthy of protection than the *legislating* function.

A limitation which does exist is that under the Fifth Amendment to the Constitution the witness cannot be required to testify as to any matter which will incriminate him unless he is relieved from federal prosecution for the matter concerning which he testifies. [*Emery's Case*, 107 Mass. 72, (applying to a state legislative inquiry); *Counselman v. Hitchcock*, 142 U. S. 547, (applying to an ICC investigation)]. The relieving statute which is now on the books [Act of Jan. 24, 1862, c. 11, 12 Stat. 333; R. S. §859;

28 U.S.C. §634] unlike its predecessor [§2 of Act of Jan. 24, 1857, c. 19, 11 Stat. 155, 156]—does not give that relief but only prevents the use of the witness's own testimony in prosecuting him. It has been vigorously contended that, as the statutes now stand a witness in a Congressional inquiry cannot be required to give testimony that will incriminate him [Compare 3 Hinds Precedents 907, Item #2447]. But, of course, if he answers without claiming his privilege, his testimony may be used against him. [*United States v. DeLorenzo*, 151 F. (2d.) 122, 125 (C.C.A. 2).]

Another limitation which now exists is that under the Fourth Amendment to the Constitution the witness cannot be compelled to respond to a *subpoena duces tecum* which is unreasonably broad. [See *Hale v. Henkel*, 201 U. S. 43, 76.] However, the standard for determining reasonable breadth has been so liberalized in recent cases involving subpoenas from administrative agencies [Compare *Oklahoma Press v. Walling*, 327 U. S. 186] that it is unlikely that a subpoena from a Congressional committee will be condemned as unreasonably broad. [Compare Senator Norris 74th Cong. 2nd Sess., Rec. 4094, Mar. 20, 1936]

While it is not clearly established, it would appear that there is no limitation upon requiring a witness to testify as to hearsay. The hearsay rule was created for tribunals where cross-examination was a recognized right and where there was a substantial risk that inexperienced laymen would be misled. Even in courts the hearsay rule is no longer rigidly insisted upon. It is commonly dispensed with in statutes creating administrative agencies which, as Judge Learned Hand said, act upon "the kind of evidence on which responsible persons are accustomed to rely in serious affairs." [*N.L.R.B. v. Remington Rand Inc.*, 94 F. (2d) 862, 873 (C.C.A. 2).] And it has no place in Congressional inquiries, for, as Prof. Frankfurter wrote in *Congressional Investigations, Hands Off*, 38 New Republic 324, 331, "Rules of evidence are but tools. These tools vary with the nature of the issues and the nature of the tribunal seeking facts."

There may exist some limitations of the type called "privileged

communications." Thus Mr. Samuel Seabury proposed a modified form of attorney-client privilege, [33 Col. L. Rev. 1, 3], and Senator Norris recognized a husband-wife privilege [74th Cong. 2nd Sess., Rec. 4094], and Mrs. Douglas' bill H. R. 4564 even proposes that newspapermen should have a limited privilege of non-disclosure. [Cf. 8 Wigmore, Evidence, §2286, note 7 and supplement.] More interesting, however, is whether there is anything like a state secret or official information beyond Congressional reach. *

Where the secret is known only to the President and his Cabinet or (as in the case of Mr. Grew's diary) to one of his ambassadors, it is arguable that the privilege belongs to the Executive and can be released only by the President, or with his consent. That was President Grant's view. [See, Nevins, *Hamilton Fish*, pp. 812-825.] And Professor Corwin says that Congress has in fact never subpoenaed a member of the Cabinet and has never addressed except by way of courteous request an inquiry to the Secretary of State. [Cf. Corwin, *President: Office and Powers*, 444-445. See 11 U. of Chi. L. Rev. 142] Where the secret is known to a lesser official the privilege probably belongs to the nation as a whole. It can certainly be released by a statute of Congress. Probably it can be released by one House acting alone or by a committee, since secrets of that lower dignity are often released by action of a subordinate executive officer and hence ought to be releasable by a member of Congress. Where the secret is a judicial secret such as the proceedings of a judicial conference preparatory to writing an opinion, it may be that there is a privilege belonging to the judiciary, but that has not been decided, and might turn on whether the investigation were with a view to legislation or to impeachment.

It has been sometimes suggested that there is a privilege of or right to privacy so that private affairs need not be disclosed except when private conduct has made, encouraged or shielded official malfeasance. But if the investigation is for a legislative purpose and the question relates to a matter pertinent to the investigation

the point that the answer will elicit information about private affairs is not a valid objection. [*Sinclair v. United States*, *supra*, 292-294]. Even if the right to be let alone is "the most comprehensive of rights and the right most valued by civilized men" [see Brandeis J. dissenting in *Olmstead v. United States*, 277 U. S. 438, 478-489] that right does not stand athwart a relevant question in an authorized investigation.

• A related, but as yet undecided point, is whether a witness can be compelled to state not the facts of his private business but his personal belief. Several types of questions of belief might be asked. A witness (particularly an expert) might be pressed for his opinion on a certain assumed set of facts—for example, on whether in the light of statistical data he is of opinion that an economic depression is likely to occur within the year. Such a question would plainly seem to require an answer.

A closer type of question is whether the witness is a member of a certain political party or believes in a certain political creed. As to this type of question the immediate doubt is whether a man's political adherence or personal belief is relevant to the particular Congressional resolution of inquiry under which the Committee is acting. But suppose the political adherence or belief is relevant. Can the question be resisted on a claim of privilege? In a letter to the *Herald Tribune* the Editor of the *New Yorker* has eloquently contended that "the essence of our political theory in this country is that a man's conscience shall be a private, not a public affair, and that only his deeds and words shall be open to survey, to censure and to punishment." Is that contention fully sustainable? What if the witness has been nominated to the Interstate Commerce Commission and Congress investigating his qualifications for that bipartisan tribunal asks him to what political party he belongs? Perhaps the example is not entirely fair—it is a question put to a witness who may have elected to abandon his privilege by accepting a nomination; moreover, it is a question less about inward belief than outward behavior in joining a group. Take then the case of an alien ap-

pearing before the Immigration Committee of the House who is asked if he believes in the assassination of public officers or the overthrow of government by force and violence or polygamy. Cannot Congress enact legislation making naturalization or immigration turn upon a person's belief? [See 8 U.S.C. §§705 and 136(f). But compare *Schneiderman v. United States*, 320 U. S. 118, 132 note 8, 171, 181.] And, if so, cannot a Committee considering naturalization or immigration legislation ask questions about a witness's belief? In short, may we not expect a majority of the courts to hold that Congress has a right to ask a witness his political belief or even his theological belief [But see 8 Wigmore, *Evidence* §2213] where it is pertinent to a resolution and where the inquiry relates to a field in which Congress can validly make legislative distinctions upon the basis of an individual's political or religious adherence or belief?

Let me turn now from the narrow questions of privilege to the broad problem of abuses which are asserted to characterize Congressional inquiries. Some of those abuses—such as browbeating of witnesses and resort by the investigator to unfair newspaper publicity—are the kind of evil which may exist, unfortunately, in any tribunal, no matter what its rules, when unworthy men hold office. We must not forget that even courts have been presided over by undignified, intemperate, hectoring, even corrupt, judges. After all, Jeffreys was a judge. But it is sometimes claimed that no court has a record which is so consistently below the standard of fairness as has Congress. Reference is made to the excesses of the Lobby Investigation described by John T. Flynn in *Harper's Magazine* for August 1930 and Walter Lippmann in the *Forum* for September 1930 and to current practices of the Committee on Unamerican Activities and the War Investigating Committee. Undoubtedly there are people who in view of these abuses want Congress to abandon or sharply curtail the practice of compelling private persons to testify in legislative investigations.

Some of these persons temperamentally have a strong sense of

privacy or have a feeling that dignity and decorum are among the highest values. But to them the fundamental answer is that the democratic process is an open process in which we have deliberately chosen to sacrifice a large measure of the privacy, dignity and decorum which characterizes other types of society in order to have in Pericles' words, "discussion and the knowledge that is gained from discussion." [Thuc. II, 40] Congressional investigations are only one, if an extreme example of our belief that exposure is the surest guard not only against official corruption and bureaucratic waste, inefficiency and rigidity but against private malpractices, divisive movements and anti-social tendencies in the body politic. That this confidence in legislative investigations as a prophylactic is not absurd is demonstrated to some extent by the difference in the strength and survival quality of democracy in English-speaking countries where such investigations are encouraged and Continental countries where they have been held within close bounds. [Cf. Ehrman, 11 U. of Chi. L. R. 1, 117] Perhaps France would have been better off if the Stavisky scandal had been investigated rather than hushed up.

Others who want Congress to curtail these legislative investigations regard them as chiefly platforms for aspiring politicians, not groundwork for understanding difficult problems. The viewpoint of these critics has perhaps been most effectively put by Senator G. W. Pepper, *Family Quarrels*, p. 173. His experience led him to believe that Senators learned almost nothing from compelling private persons to testify on topics as to which legislation was being considered, and that the best way for a Senator to make up his mind was for him like a lawyer preparing a brief to dig in a library for the real facts. However, I am inclined to believe that his views reflect the habits of an unusually bookish type of Senator and Congressman. Most politicians play by ear. When they rely on their eyes they tend to act at sight of a newspaper not sight of a scholarly book or a statistical abstract. As James Scott Reston of the New York Times remarked, "Senators,

as is well known, are great questioners, and like to say, with Mr. Kipling:

'I keep six honest serving men.
(They taught me all I knew.)
Their names are What, and Why and When,
And How and Where and Who.'

Moreover, even if all members of Congress were prepared to gain their personal knowledge of a subject from studies in the Library of Congress it does not follow that the intellectual development which they would thereby acquire would by itself warrant legislation. Every type of government, and especially a democracy, relies upon the creation of a favorable public opinion for the acceptance and thus the enforcement of new legislation. And there is no more legitimate way of making the public sympathetic with new legislation than to let them participate vicariously in their representatives' experiences in hearing the alleged evils and the alleged panaceas. Even as unfriendly a witness as Mr. Wiggin of the Chase National Bank confessed to the Senate Banking Committee that investigations educate the public. [Pecora, *Wall Street Under Oath*, pp. 186-187 (1939)]

A third group who want Congress to curtail legislative investigations propose not that investigations should be abandoned but that they should be handled by disinterested qualified commissions—either existing administrative agencies, like the ICC, SEC and FTC, or special *ad hoc* commissions, like the Industrial Commission set up by President Wilson, the Wickersham Commission on Law Enforcement and on Prohibition created by President Hoover or the TNEC established by the action of both Houses of Congress during President F. D. Roosevelt's administration. This suggestion of *ad hoc* commissions is pressed particularly by those who admire the accomplishments of Royal Commissions functioning in the the United Kingdom. [Cf. Frankfurter, *The Public and Its Government*] No doubt there is much to be said for the greater expertness, efficiency, sense of

relevancy and dignity of a Commission. And it would frequently be fortunate if a Commission investigation were preferred to a Congressional procedure. But it is too much to expect that such a preference will always be exercised. There are certain topics which are essentially more suitable for a legislative than for a lay committee—for example, alleged corruption, favoritism or inefficiency affecting public business. Here “visitatorial power” should be exercised “by the body which levies the taxes and appropriates the money to keep the executive departments running.” [Pepper, *Family Quarrels*, p. 177] And there are other topics on which it is quite justifiable to secure the public attention and newspaper, radio and motion picture publicity which Congress commands and which Commissions generally can not—and usually do not want to—attract. Examples, in my view, were the two investigations in the 1930's of the stock market and of the munitions industry. Both cut so deep into our fundamental policy, one in the realm of finance, the other in the realm of foreign affairs, that it was desirable to choose a tribunal of inquiry which would have the maximum continuous public attention. It would not, in my opinion, have been desirable for the nation to proceed to enact legislation on stock exchanges or on neutrality if the country as a whole had been kept abreast of testimony only to the extent shall I say that it was kept abreast of the hearings before the Wick-ersham Commission, an able, dignified but colorless body.

If it be conceded that it is desirable that there should be a continuance of the practice of compelling private persons to testify before Congressional committees on matters upon which legislation may be adopted, the question remains as to what reforms should be instituted.

Should there be a wider ambit of judicial review? No sensible person supposes that an injunction now lies against a Congressional committee [Cf. *Hearst v. Black*, 87 F. (2d) 68 (Ct. of App. D. C.)] any more than it does against an administrative agency [Cf. *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41] to prevent it from continuing an inquiry or using testimony. But it

has been suggested that a witness who believes he is being subjected to an improper question or search or other abuse should have a review *instantly* before a court. This and indeed any other broadening of judicial review seem to me ill-advised remedies. A witness in a trial court is not allowed thus to interrupt the progress of a case by appealing a ruling on evidence or procedure; if he feels strongly the justice of his position, he can defy the trial court and challenge its ruling in a contempt proceeding; but if his objection is minor or of doubtful validity his interest in an immediate determination has never been thought to outweigh the court's interest in prompt disposal of its business. And this familiar rule of court practice seems equally fair for legislative investigations. Moreover, the suggestion of a broadened judicial review of legislative investigations is founded upon a not universally shared view that the power of judges should be extended because they are ultimately the surest guardians of our liberty. After all it was a judge who told us "it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts." [Holmes, J. in *Mo. K. & T. R. Co. v. May*, 194 U. S. 267, 270]. Furthermore, judges cannot be unmindful of Senator Pepper's caveat that if courts should interfere too often there would be constant tension and quarreling between two great divisions of our government. As Senator Pepper reminds the courts "Joseph's brethren plotted to get rid of him for having a dream of supervisory authority." [Pepper, *Family Quarrels*, p. 173].

Should Congress enact curative legislation addressed to the alleged abuses of Congressional investigations? A serious objection to the suggestion of statutory reform is that probably no practical statute can be devised which will reach some of the most serious abuses. As Walter Lippmann observed, these abuses are not to be "solved by an ingenious idea" for to some extent they are a reflection of the "mores of the nation." [84 Forum 129, 132]. They are also a reflection of the shortcomings of individual legislators who pervert for publicity's sake or some like ulterior ob-

jective a procedural device which is not inherently unfair. And yet even if all abuses cannot be reached by a statute, if Congress enacted legislation which sought to cure only a few glaring evils, its action might not only accomplish those specific cures but might by demonstrating its awareness of the necessity of Congressional self-restraint have a salutary effect on practices not specifically outlawed. Congressmen, better than most people, know that a statute is more than a sovereign's command enforced by a sanction; it is also an educational force going beyond the letter of the statute book; it sets in motion new trends which form new social patterns.

Looked at in that educational light, a statute might well stipulate as minimum standards for a legislative inquiry that a witness called before a Congressional committee of inquiry would have the rights (a) to have counsel present, (b) to file a written statement before the hearing concluded and (c) to have an accurate record kept of his own testimony.

The right of a witness to have counsel present to assist him is almost universal in our system. The only important exception is in grand jury proceedings to which, it should be remembered, only witnesses and not prospective defendants are usually summoned. Secrecy and refusal to admit counsel there have an understandable purpose. [Cf. *In re Kittle*, 180 Fed. 946, 947 (S.D.N.Y.)] But in Congressional inquiries a witness should have a lawyer at his elbow not only so that he may whisper to his client claims of privilege but so that he may by his mere presence serve to remind the Committee of Investigation of the high standards which the legal profession seeks to maintain in all tribunals. All of us who sit in seats of authority know that not the least of the restraints upon us is the unspoken judgment of our peers.

The right of a person to file a brief written statement at the conclusion of his testimony or at the conclusion of testimony of a witness who had commented on him adversely ought also to be recognized. C. K. Allen, the Warden of Rhodes House, Oxford in his little volume on *Democracy And The Individual* has put

the point well: "*audi alteram partem* is a fundamental law of democracy." (p. 67). The filing of a written statement is by now such a customary device in Congressional hearings that its use is not only recognized but encouraged by §133(e) of the Legislative Reorganization Act of 1946. [60 Stat. 812, 831]. Nor is there any danger that a statement filed at the conclusion of the witness's or of another's testimony will in some way hinder a disclosure of evidence—as Congressional investigators might fear—give Congress or the public an initially erroneous slant on the topics being inquired into. Indeed, the right to file a statement before a Congressional committee at the times I have suggested finds a compelling analogy in the right to make a statement accorded to a defendant in a criminal case even in the Eighteenth Century when he could not be a witness on his own behalf. [9 Holdsworth, *History of Law*, 195-196, 229]

A statute or a Congressional rule should recognize that the record of a witness's testimony including both questions and answers should not be edited. The only justification of a written record of a witness's examination is the preservation of a truthful report. The habit of editing testimony in a Congressional investigation has been carried over from two situations where editing may perhaps be justified: the editing by a Congressman of his speeches on the floor, and the editing by the head of a department of his off-hand remarks before an appropriations or like committee. But such editing should not be permitted where the report covers testimony of witnesses who are compelled under oath to tell the truth, the whole truth and nothing but the truth. And reporters ought not to be asked to break their obligation of fidelity by Congressmen who seek to alter the record to put themselves in a better light than they deserve.

If a statute gave a witness these rights to have counsel present, to file a written statement before the hearing concluded, and to have an accurate record of his testimony, it would go as far as seems to me practical at the present time. There are other possible reforms, however, which seem to me worth mentioning not be-

cause I believe they should be codified now but because I propose that they should be studied by committees established by this and other Bar Associations.

One possible reform is that a private person should not be compelled to testify *in camera* unless the majority of the Committee explicitly rules that the public interest requires that the testimony shall be kept secret. Of course, this would not preclude a witness from voluntarily submitting to a secret examination. And in view of the proviso that I have stated it would not preclude a majority of a committee from requiring that the examination be kept secret in cases where on mature reflection it seemed to them warranted.

Another more important reform would be that a witness should not be compelled to testify unless there is present at least one member of the committee who is not doing the principal interrogating. The most serious browbeating of witnesses has generally occurred when there has been no one except the interrogator to whom the witness could appeal. We all are aware of the extent to which an enthusiastic and hostile examiner may go unless he is occasionally reminded by a presiding officer that the witness also has rights. If the examiner before the Congressional committee is a lawyer who is not a member of Congress, it would be sufficient for the witness to have one member of Congress present to whom he can appeal directly for a restraining ruling. If the principal examiner is himself a member of Congress, the presence of another member of Congress would afford some protection to the witness.

In any serious claim of privilege the witness ought to have the right by motion to urge his points before the committee as a whole and get their considered ruling, after listening to argument by the witness's counsel.

A fourth possible reform would be that a person who has been adversely criticised by a witness before the Committee should have the right to file with the Committee a limited number of written interrogatories which, unless the Committee by majority

vote otherwise directed, should be answered in writing by the hostile witness. This type of written interrogatory would not delay and confuse, as cross-examination might delay and confuse, the investigation. It would not impose a more onerous burden on the critical witness than he would have to undergo in civil litigation in the courts. And it would give the offended person a reasonable chance to procure relevant evidence to meet the criticism. As a matter of fact, this proposal falls short of what some other commentators have thought desirable. In his article in the *New Republic* in 1924 Prof. Frankfurter wrote that "of course, the essential decencies must be observed, namely opportunity for cross-examination must be afforded to those who are investigated or to those representing issues under investigation." [38 *New Republic*, 324, 331.] And Senator Hatch has recently [*Christian Science Monitor*, Fri., Dec. 19, 1947, p. 24] proposed that "Persons whose reputations are brought into question in any way should be permitted to prepare written questions to develop whatever points may be desired."

A fifth possible reform is that no *private* person should be compelled to testify unless a majority of the Committee approves of the issuance of a subpoena to him. The expenditure of time and money incurred in attending a hearing is always a burden. It is a burden which in appropriate cases must be borne if government is to function at its highest level. But the burden of going to Washington and of having one's affairs exposed to a pitiless blaze of publicity ought not to be imposed on the unwilling unless there is substantial ground for believing that there will be a corresponding benefit. It is difficult for any investigator to judge fairly this issue of relative burden and benefit in an investigation in which he is interested. That is why in ordinary criminal cases the Fourth Amendment prohibits a search or seizure unless a disinterested official, not himself an investigator, finds there is probable cause. While the letter of that clause of the Fourth Amendment does not apply to a Congressional committee, it would seem in accord with its policy, and in accord with the

policy of civil litigation that allows a subpoena to be quashed by a judge, that in Congressional investigations subpoenas to private persons should require the vote of a majority of a committee.

Let me restate that in my view none of these five possible reforms of (a) open hearings, (b) presence of a Congressman other than the principal interrogator, (c) motions addressed to the whole committee, (d) filing of interrogatories, and (e) concurrence of a majority of the Committee in issuing subpoenas ought to be immediately codified in a statute or Congressional rule. In my judgment they and other similar proposals ought to be considered in the light of the actual workings of Congressional committees by committees on Congressional Investigations to be appointed by bar associations. The mere creation of such bar committees would have a salutary effect in alerting members of Congress to the abuses of the present system and in mobilizing professional opinion to guide Congress and the public to sensible solutions. In the long run it might conceivably appear that the use of these watch dogs had obviated the need of erecting boundary marks or fences. And even if that happy consequence did not follow it is at least possible that it would be sufficient if the bar associations proposed not an iron-clad statutory scheme but a limited statute on interrogatory procedure and what might be called "canons of behavior for legislative and like committees of inquiry." If such a pattern of conduct were widely endorsed by the best professional opinion, it might be as effective as judicial decrees and legislative enactments in bringing about fair play. It would create a standard to which a witness might repair. It would be a moral force constantly felt in the halls of Congress.

Opinion

COMMITTEE ON PROFESSIONAL ETHICS

PROFESSIONAL ANNOUNCEMENTS IN FOREIGN LANGUAGE NEWSPAPERS*

Your letter of October 10, 1946, requests this Committee's opinion on the question whether it will be proper for you to insert an advertisement in a certain Spanish-language newspaper published in New York, giving your name, telephone number and address and stating that you are admitted to practice in Puerto Rico and New York and speak Spanish and are a notary.

In the opinion of the Committee, such advertising would be improper. Canon 27 of the Canons of Professional Ethics prohibits solicitation of professional employment by advertisements. Publication of the data proposed for your advertisement is not proper except in reputable law lists to the extent permitted by Canons 27 and 43. The newspaper in question is not a "law list." (See Op. 833 of this Committee and A.B.A. Op. 182.)

* Because of recent interest in the opinions of the Committee on Professional Ethics dealing with announcements in foreign language newspapers, there is published here a recent ruling of the Committee on this subject. This opinion overrules previous opinions and results from an amendment in 1937 to Canon 27 of the Canons of Professional Ethics. This opinion is Opinion B-36 and will be found in the bound volume of the opinions of the Committee which is in the Library.

Committee Report

COMMITTEE ON INTERNATIONAL LAW

TEXT OF THE

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS*

PART I

Article 1

The State parties hereto declare that they recognize the principles set forth in Part II hereof as being among the human rights and fundamental freedoms founded on the general principles of law recognized by civilized nations.

Article 2

Every State, party hereto, undertakes to ensure:

(a) that its laws secure to all persons under its jurisdiction, whether citizens, persons of foreign nationality or stateless persons, the enjoyment of these human rights and fundamental freedoms;

(b) that such laws, respecting these human rights and fundamental freedoms, conform with the general principles of law recognized by civilized nations;

(c) that any person whose rights or freedoms are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(d) that such remedies shall be enforceable by a judiciary whose independence is secured; and

(e) that its police and executive officers shall act in support of the enjoyment of these rights and freedoms.

Article 3

On receipt of a request to this effect from the Secretary-General of the United Nations made under the authority of a resolution of the General Assembly, the Government of any party to this Covenant shall supply an explanation as to the manner in which the law of that State gives effect to any of the provisions of this Covenant.

* The Committee on International Law publishes here the text of the proposed covenant on human rights as drafted by the Commission on Human Rights of the United Nations. The covenant is being studied by the Committee. The Committee will report its conclusions and recommendations to the Association at the Stated Meeting on March 9, 1948.

Article 4

1. In time of war or other public emergency, a State may take measures derogating from its obligations under Article 2 above to the extent strictly limited by the exigencies of the situation.

2. Any State party hereto availing itself of this right of derogation shall inform the Secretary-General of the United Nations fully of the measures which it has thus enacted and the reasons therefor. It shall also inform him as and when the measures cease to operate and the provisions of Article 2 are being fully executed.

PART II

Article 5

It shall be unlawful to deprive any person of his life save in the execution of the sentence of a court following his conviction of a crime for which this penalty is provided by law.

Article 6

It shall be unlawful to subject any person to any form of physical mutilation or medical or scientific experimentation against his will.

Article 7

No person shall be subjected to torture or to cruel or inhuman punishment or to cruel or inhuman indignity.

Article 8

1. No person shall be held in slavery or servitude.
2. No person shall be required to perform forced or compulsory labour in any form other than labour exacted as a punishment for crime of which the person concerned has been convicted by due process of law.
3. For the purposes of this Article, the term "forced or compulsory labour" shall not include:

(a) any service of a purely military character, or service of a non-military character in the case of conscientious objectors, exacted in virtue of compulsory military service laws;

(b) any service exacted in cases of emergency created by fire, flood, famine, earthquake, violent epidemic or epizootic disease, invasion by animals, insect or vegetable pests, or similar calamities or other emergencies threatening the life or well-being of the community;

(c) any minor communal services considered as normal civic obligations incumbent upon the members of the community, provided that these obligations have been accepted by the members of the community concerned directly or through their directly elected representatives.

Article 9

1. No person shall be subjected to arbitrary arrest or detention.

2. No person shall be deprived of his liberty save in the case of:

(a) the arrest of a person effected for the purpose of bringing him before a court on a reasonable suspicion of having committed a crime or which is reasonably considered to be immediately necessary to prevent his committing a crime;

(b) the lawful arrest and detention of a person for noncompliance with the lawful order or decree of a court;

(c) the lawful detention of a person sentenced after conviction to deprivation of liberty;

(d) the lawful detention of persons of unsound mind;

(e) the parental or quasi-parental custody of minors;

(f) the lawful arrest and detention of a person to prevent his effecting an unauthorized entry into the country;

(g) the lawful arrest and detention of aliens against whom deportation proceedings are pending.

3. Any person who is arrested shall be informed promptly of the charges against him. Any person who is arrested under the provisions of subparagraphs (a) or (b) of paragraph 2 of this Article shall be brought promptly before a judge, and shall be tried within a reasonable time or released.

4. Every person who is deprived of his liberty shall have an effective remedy in the nature of "habeas corpus" by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Every person shall have an enforceable right to compensation in respect of any unlawful arrest or deprivation of liberty.

Article 10

No person shall be imprisoned or held in servitude in consequence of the mere breach of a contractual obligation.

Article 11

1. Subject to any general law not contrary to the purposes and principles of the United Nations Charter and adopted for specific reasons of security or in the general interest, there shall be liberty of movement and free choice of residence within the borders of each state.

2. Any person who is not subject to any lawful deprivation of liberty or to any outstanding obligations with regard to national service shall be free to leave any country including his own.

Article 12

No alien legally admitted to the territory of a State shall be arbitrarily expelled therefrom.

Article 13

1. In the determination of any criminal charge against him or of any of his civil rights or obligations, every person is entitled to a fair hearing before an independent and impartial tribunal and to the aid of a qualified representative of his own choice.

2. No person shall be convicted or punished for crime except after public trial.

Article 14

1. No person shall be held guilty of any offense on account of any act or omission which did not constitute such an offense at the time when it was committed, nor shall he be liable to any greater punishment than that prescribed for such offense by the law in force at the time when the offense was committed.

2. Nothing in this Article shall prejudice the trial and punishment of any person for the commission of any act which, at the time it was committed, was criminal according to the general principles of law recognized by civilized nations.

Article 15

No person shall be deprived of his juridical personality.

Article 16

1. Every person shall have the right to freedom of religion, conscience and belief, including the right, either alone or in community with other persons of like mind, to hold and manifest any religious or other belief, to change his belief, and to practice any form of religious worship and observance, and he shall not be required to do any act which is contrary to such worship and observance.

2. Every person of full age and sound mind shall be free, either alone or in a community with other persons of like mind, to give and receive any form of religious teaching, and in the case of a minor the parent or guardian shall be free to determine what religious teaching he shall receive.

3. The above rights and freedoms shall be subject only to such limitations as are prescribed by law and are necessary to protect public order and welfare, morals and the rights and freedoms of others.

Article 17

(The Commission decided not to elaborate a final text on this Article until it had before it the views of the Sub-Commission on the Freedom of Information and of the Press and of the International Conference on Freedom of Information. The texts reproduced below have been proposed by the Drafting Committee and by the Representative of the *United States* respectively.)

(Text proposed by the Drafting Committee:)

(1. Every person shall be free to express and publish his ideas orally, in writing, in the form of art or otherwise.)

(2. Every person shall be free to receive and disseminate information of all kinds, including facts, critical comment and ideas, by the medium of books, newspapers, oral instructions or any other lawfully operated device.)

(3. The freedoms of speech and information referred to in the preceding paragraphs of this Article may be subject only to necessary restrictions, penalties or liabilities with regard to: matters which must remain secret in the interests of national safety; publications intended or likely to incite persons to alter by violence the system of Government, or to promote disorder or crime; obscene publications; (publications aimed at the suppression of human rights and fundamental freedoms); publications injurious to the independence of the judiciary or the fair conduct of legal proceedings; and expressions or publications which libel or slander the reputations of other persons.)

(Text proposed by the Representative of the United States:)

(Every one shall have the right to freedom of information, speech and expression. Every one shall be free to hold his opinion without molestation, to receive and seek information and the opinion of others from sources wherever situated, and to disseminate opinions and information, either by word, in writing, in the press, in books or by visual, auditive or other means.)

Article 18

All persons shall have the right to assemble peaceably for any lawful purpose including the discussion of any matter on which under Article 17 any person has the right to express and publish his ideas. No restrictions shall be placed on the exercise of this right other than those necessary for:

- (a) the protection of life or property;
- (b) the prevention of disorders; or
- (c) the prevention of the obstruction of traffic or the free movement of others.

Article 19

All persons shall be free to constitute associations, in whatever form may be appropriate under the law of the State, for the promotion and protection of their legitimate interests and of any other lawful object, including the dissemination of all information of which under Article 17 the dissemination is unrestricted. The rights and freedoms set forth in Articles 16 and 17 shall be enjoyed by such associations.

Article 20

Every person shall be entitled to the rights and freedoms set forth in this Covenant, without distinction as to race (which includes colour), sex, lan-

guage, religion, political or other opinion, property status, or national or social origin. Every person, regardless of office or status, shall be entitled to equal protection under the law against any arbitrary discrimination or against any incitement to such discrimination in violation of this Covenant.

Article 21

Any advocacy of national, racial or religious hostility that constitutes an incitement to violence shall be prohibited by the law of the State.

Article 22

Nothing in this Covenant shall be considered to give any person or State the right to engage in any activity aimed at the destruction of any of the rights and freedoms prescribed herein.

PART III

Article 23

1. This Covenant shall be open for accession to every State Member of the United Nations or party to the Statute of the International Court of Justice and to every other State which the General Assembly of the United Nations shall, by resolution, declare to be eligible.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations, and as soon as two-thirds of the States Members of the United Nations have deposited such instruments the Covenant shall come into force between them. As regards any State which accedes thereafter, the Covenant shall come into force on the date of the deposit of its instrument of accession.

3. The Secretary-General of the United Nations shall inform all members of the United Nations and the other States referred to in paragraph 1 above of the deposit of each instrument of accession.

Article 24

In the case of a Federal State, the following provisions shall apply:

(a) With respect to any Articles of this Covenant which the federal government regards as wholly or in part appropriate for federal action, the obligations of the federal governments shall, to this extent, be the same as those of parties which are not federal states;

(b) In respect of Articles which the federal government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent States, Provinces or Cantons, the federal government shall bring such provisions, with a favourable recommendation, to the notice of the appropriate authorities of the States, Provinces or Cantons.

Article 25

1. This Covenant shall apply in respect of any colony or overseas territory of a State party hereto, or any territory subject to the suzerainty or protection of such State, or any territory in respect of which such State exercises a mandate or trusteeship, when that State has acceded on behalf and in respect of such colony or territory.

2. The State concerned shall, if necessary, seek the consent at the earliest possible moment of the governments of all such colonies and territories to this Covenant and accede on behalf and in respect of each such colony and territory immediately its consent has been obtained.

Article 26

1. Amendments to this Covenant shall come into force when they have been adopted by a vote of two-thirds of the Members of the General Assembly of the United Nations and ratified in accordance with their respective constitutional processes by two-thirds of the parties to this Covenant.

2. When such amendments come into force they shall be binding on those parties which have ratified them, leaving other parties still bound by the provisions of the Covenant which they have accepted by accession, including earlier amendments which they have ratified.

Article 27

In construing the Articles of this Covenant, the several Articles shall be regarded in their relation to each other.

The Library

SIDNEY B. HILL, *Librarian*

SELECTED LIST OF WRITINGS ON THE PHILOSOPHY OF THE LAW

"Hast thou any philosophy in thee?" (As You Like It, Act III, Scene 2)

The unsettled world conditions have led to a re-examination of basic principles, and this has resulted in a renewed interest in the nature of law and justice by scholars in and out of the profession. The quintessence of contemporary legal philosophic thought may be found in the volume of essays tendered to Dean Pound by his older students and other friends on his seventy-fifth birthday.¹

It is hoped that the practitioner will find in the scholarly writings here listed, assistance in understanding his "jealous mistress," the Law. In any event, he will find rich food for his leisure hours.

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¹ Interpretations of Modern Legal Philosophies: Essays in honor of Roscoe Pound.

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DEATHS REPORTED SINCE OCTOBER 20, 1947

<i>Elected</i>		<i>Died</i>
1927	Horace C. Hale	May 9, 1945
1944	Jules Haberman	August 24, 1947
1920	William Morton Carden	October 24, 1947
1924	John C. Doolan	October 25, 1947
1922	Felix A. Donnelly	November 4, 1947
1899	Harold E. Lippincott	November 4, 1947
1892	John Bassett Moore	November 12, 1947
1907	Lorenzo D. Armstrong	November 15, 1947
1929	Donald C. Muhleman	November 19, 1947
1935	Frederick E. Crane	November 21, 1947
1900	Carrington G. Arnold	November 23, 1947
1921	Charles B. McLaughlin	December 8, 1947
1928	Nathan Ross Margold	December 16, 1947
1907	Thomas Mills Day	December 28, 1947
1924	Samuel W. Fordyce	January 9, 1948
1926	Andrew M. Williams	January 9, 1948
1920	Albert J. King	January 16, 1948
1909	D. Roger Englar	January 18, 1948
1926	Anson W. H. Taylor	January 24, 1948
1898	Russell E. Burke	January 26, 1948
1942	George G. Tennant	February 2, 1948



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